

AMENDED IN ASSEMBLY APRIL 27, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2036**

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**Introduced by Assembly Member Bill Berryhill**

February 17, 2010

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An act to amend Section 3186 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2036, as amended, Bill Berryhill. Public works: stop notices.

*Existing law provides that all persons and laborers of every class, except for an original contractor, performing labor upon, bestowing skill or other necessary services on, furnishing materials or leasing equipment to be used or consumed in, or furnishing appliances, teams, or power contributing to, a public work of improvement may serve a stop notice upon the public entity responsible for the public work, as specified. Existing law imposes a duty on a public entity to withhold money or bonds due or to become due to the original contractor in an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation on the matter, as specified.*

*This bill would qualify the requirement that the public entity withhold money or bonds sufficient to provide for reasonable litigation costs to make it applicable only if the original contractor fails to promptly accept a tender of defense of the public entity in the litigation.*

~~Existing law provides that it is the duty of a public entity, upon receipt of a stop notice for a public work of improvement, to withhold from the original contractor, or from any person acting under his or her authority, money or bonds due or to become due to that contractor in~~

~~an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder.~~

~~This bill would require a public entity to promptly tender its defense to the original contractor in any litigation to enforce the stop notice, and, if the contractor accepts that tender, the bill would require the public entity to reduce the amount withheld to the amount necessary to answer the claim stated in the stop notice.~~

~~Because the bill would impose new duties on local public officials, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3186 of the Civil Code is amended to  
2     read:

3     3186. It shall be the duty of the public entity, upon receipt of  
4     a stop notice pursuant to this chapter, to withhold from the original  
5     contractor, or from any person acting under his or her authority,  
6     money or bonds ~~(where, if bonds are to be issued in payment for~~  
7     ~~the work of improvement)~~ *improvement, that are* due or to become  
8     due to that contractor in an amount sufficient to (a) answer the  
9     claim stated in the stop notice and ~~to~~ (b) provide for the public  
10    entity's reasonable cost of any litigation thereunder, *if the original*  
11    ~~contractor fails to promptly accept a tender of defense of the public~~  
12    ~~entity in the litigation.~~ The public entity may satisfy this duty by  
13    refusing to release money held in escrow pursuant to Section 10263  
14    or 22300 of the Public Contract Code.

15    ~~SECTION 1. Section 3186 of the Civil Code is amended to~~  
16    ~~read:~~

17    ~~3186. It shall be the duty of the public entity, upon receipt of~~  
18    ~~a stop notice pursuant to this chapter, to withhold from the original~~

1 contractor, or from any person acting under his or her authority;  
2 money or bonds (where bonds are to be issued in payment for the  
3 work of improvement) due or to become due to that contractor in  
4 an amount sufficient to answer the claim stated in the stop notice  
5 and to provide for the public entity's reasonable cost of any  
6 litigation thereunder. The public entity shall promptly tender its  
7 defense to the original contractor in any litigation to enforce the  
8 stop notice, and, if the contractor accepts that tender, the public  
9 entity shall reduce the amount withheld to the amount necessary  
10 to answer the claim stated in the stop notice. The public entity may  
11 satisfy this duty by refusing to release money held in escrow  
12 pursuant to Section 10263 or 22300 of the Public Contract Code.

13 SEC. 2. ~~If the Commission on State Mandates determines that~~  
14 ~~this act contains costs mandated by the state, reimbursement to~~  
15 ~~local agencies and school districts for those costs shall be made~~  
16 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
17 ~~4 of Title 2 of the Government Code.~~